

[NOT FOR PUBLICATION—NOT TO BE CITED AS PRECEDENT]

**United States Court of Appeals
For the First Circuit**

No. 01-1289

UNITED STATES,

Appellee,

v.

JULES DELGADO VALENCIA,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF PUERTO RICO

[Hon. Héctor M. Laffitte, U.S. District Judge]

Before

Boudin, Chief Judge,
Torruella and Lynch, Circuit Judges.

Jules Delgado Valencia on brief pro se.

Guillermo Gil, United States Attorney, Jorge E. Vega-Pacheco,
Assistant U.S. Attorney, and Nelson Pérez-Sosa, Assistant U.S.
Attorney, on brief for appellee.

August 27, 2001

Per Curiam. Upon the agreement of the parties, and after a thorough review of the record and of the submissions, we reverse the district court's order denying appellant Jules Delgado Valencia's ("Delgado's") motion for relief pursuant to Fed. R. Crim. P. 36, and we vacate the judgment and remand with instructions to amend the sentence accordingly.

At sentencing, the court unambiguously stated that Delgado's term of imprisonment was to be "13 years and seven months." It then attempted to convert that term into months, but it admitted that its conversion might be mathematically erroneous; and as it turns out, it was erroneous, and the error was repeated in the written judgment. "If there should be a variance between the oral pronouncement of sentence and the sentence as set forth in the written judgment, the oral sentence prevails." 3 Charles Alan Wright, Federal Practice and Procedure Crim. 2d § 534 (1982). The mathematical error may be corrected pursuant to a motion under Rule 36. Id.

The district court's denial of the Fed. R. Crim. P. 36 motion is reversed, the judgment in this matter is vacated, and the case is remanded to the district court with instructions to amend the judgment to show that Delgado is to be imprisoned for a term of 163 months.